Table of Contents

IAB #2239239

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY
IAB CASE #IV 2239239

COMPLAINANT: [redacted] Civilian, FH/05-02-73

SUBJECT: DAVID ECKSTROM [redacted] Deputy Sheriff
Twin Towers Correctional Facility

LOCATION: [redacted]

DATE/TIME OF INCIDENT: September 18, 2007, Between 1300-1500 Hours,

DATE OF DEPARTMENT NOTIFICATION: November 12, 2008

ALLEGATIONS

1. 3-01/030.10 - Obedience to Laws, Regulations and Orders

2. 3-01/030.05 - General Behavior

3. 3-01/030.06- Inappropriate/Disorderly Conduct

4. 3-01/030.15- Conduct Towards Others

It is alleged on September 18, 2007, while on-duty, Subject Eckstrom attempted to remove Complainant [redacted] blouse in order to expose and/or touch her breast. This incident took place while the subject was assigned to the Scientific Services Bureau as a finger print deputy and was assigned to take finger print evidence from the complainant's apartment [Exhibit C] due to a home burglary incident [Exhibit A].

SYNOPSIS

On September 9, 2007, the complainant's apartment was burglarized and a report [Exhibit E] was taken by Compton Station on September 13, 2007. A print deputy was requested at the time of the report and Subject Eckstrom was assigned to gather fingerprint evidence from the complainant's apartment [Exhibit C] on September 18, 2007.

Complainant [redacted] primarily speaks and understands Spanish, but also has a slight understanding of the English language. Based in the LASD Incident Report [Exhibit A] taken by Detective Lorena Gomez from Compton Station, dated November 20, 2008, she indicated the following:

The complainant indicated Subject Eckstrom arrived at her apartment between 1300 and 1500 hours on September 18, 2007. She was there with her [redacted] that range in [redacted]. During her contact with the subject, he inquired who the [redacted] belonged to, if she lived with her [redacted] and when was she at home. She indicated the subject's line of questioning made her nervous and she decided not to have him fingerprint her apartment.

Subject Eckstrom left the apartment, but returned approximately twenty minutes later with two pizzas from Little Ceaser's. The subject told the complainant he brought the pizzas for the [redacted] and that he needed to speak to her in private. She allowed the subject to enter and walked the subject to her [redacted] bedroom as the [redacted] began to eat the pizza in the kitchen area. As they entered the bedroom, the subject partially closed the bedroom door. He then told her that he found her to be attractive, but came back to talk to her about the case. He then attempted to assure her he would protect her from the burglars. He told her he would like to see her when the [redacted] were at school in order to have a [romantic] "relationship" with her [Exhibit A, page 5].

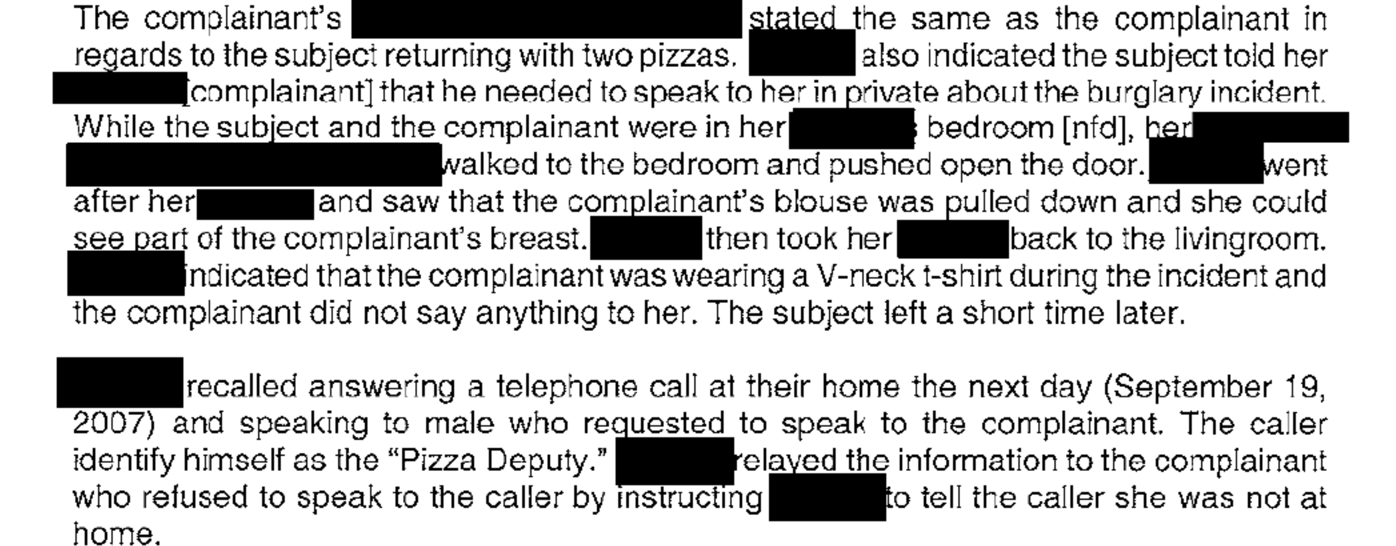
The complainant indicated she was nervous and could not verbally express herself to the subject as he stared at her chest area, and he stated, "Very good." She then began to walk away from him as he attempted to hug her. The subject told her he would leave if she told him to come back and she would show him her breast. He then instructed her to pull her blouse down so that he could see her breast. He then attempted to pull her blouse down, partially exposing her bare breast. The subject then reached down for his belt buckle as if he was about to unfasten his pants when her [redacted] and [redacted] came into the bedroom. At this point, the subject told her he was leaving and asked if he could see her again. He also indicated he may telephone her as he left in a white van with no identifying logos.

The complainant indicated the subject telephoned her approximately twenty minutes after leaving her apartment. He inquired how she felt and that he wanted to see her again. He expressed that he liked her and wanted to be with her. She responded by telling him she "did not want anything [Exhibit A, page 6]."

Approximately two weeks later, the subject returned to her apartment without prior notice. She was taking a shower and her [redacted] allowed the subject to enter the apartment. The subject stood by the restroom door, asked her if she was showering and told her he had something very important to tell her. She told him she was showering and he left the apartment. Her [redacted] told her he drove away in a white four door vehicle. Approximately forty-five minutes later he telephoned her and asked her if she touched herself [sexually]. He went on to inquire what she did when she was alone. He expressed

he liked women who play with themselves. The complainant indicated she felt the subject was masturbating during this telephone call due to the deep breathing sounds he was making during their conversation.

Approximately three months after the aforementioned incident, as she drove home, she saw the subject in the white van which was parked outside her gated complex. In order to avoid him, she drove by and waited until he left before returning to the complex. She indicated that some neighborhood children told her a police officer, matching the subject's description, had come to the apartment several times before looking for the complainant.



The complainant's [redacted] stated the same as the complainant in regards to the subject returning with two pizzas. [redacted] also indicated the subject told her [redacted] [complainant] that he needed to speak to her in private about the burglary incident. While the subject and the complainant were in her [redacted] bedroom [nfd], her [redacted] walked to the bedroom and pushed open the door. [redacted] went after her [redacted] and saw that the complainant's blouse was pulled down and she could see part of the complainant's breast. [redacted] then took her [redacted] back to the livingroom. [redacted] indicated that the complainant was wearing a V-neck t-shirt during the incident and the complainant did not say anything to her. The subject left a short time later.

[redacted] recalled answering a telephone call at their home the next day (September 19, 2007) and speaking to male who requested to speak to the complainant. The caller identify himself as the "Pizza Deputy." [redacted] relayed the information to the complainant who refused to speak to the caller by instructing [redacted] to tell the caller she was not at home.

Criminal Investigation

The Incident report was taken by Detective Lorena Gomez of Compton Sation, and the complainant's statements were not taped recorded. During the her interview with the complainant, Detective Gomez conducted a photo line-up which included the photo of the subject. The complainant was not able to identify the subject as the person who had assaulted her by pulling down her shirt.

The criminal case was investigated by ICIB. Per ICIB Lieutenant Juan Fabrega, after consultation with the Los Angeles District Attorney's Office, the case was not filed due to statute of limitations concerns and the complainant's inability to identify the subject from photo line-up. No case file generated by ICIB and no investigative case documents located.

INVESTIGATION

Complainant [redacted] Statement

The complainant was interviewed by IAB Sergeant Irma Chevalier on September 16, 2009, at Compton Station under Job ID #27341. The complainant stated substantially the same as in her Detective Bureau interview with Detective Lorena Gomez in 2008, with the exception of the following:

- The subject did not expose her breast when he pulled at her V-neck shirt, only cleavage. She was wearing a bra. [pages 15 & 22]
- The subject never touched her breast or attempted to hug her [Pages 18 & 19].
- The subject did not attempt to undo his belt buckle, but instead rub his hand around his groin area [Page 23].
- The subject telephoned her residence approximately ten times after his initial contact of September 18, 2007 [Page 32].
- Her [redacted] told her that he was driving a white van when he to the apartment while she was in the shower. Not a white car. [Page 29]

The complainant stated she waited almost a year to report the incident to the sheriff's department because she was afraid of losing her [redacted] The complainant had regained custody of her [redacted] on June 6, 2007, after reaching an agreement with County social workers of providing suitable housing for her [redacted] She feared the subject may influence her custody agreement with the County if she had reported the incident earlier [Pages 45 - 46].

The complainant indicated [Pages 34 thru 36] that she told a community counselor about the incident approximately two months later. The counselor [redacted] was employed through the Family Preservation Program in Los Angeles. This conversation took place during team meeting on November 14, 2007 [Exhibit H].

IAB note: **Ms. [redacted] told the IAB investigator she vaguely remembered having a conversation with the complainant regarding an incident the complainant had with a deputy sheriff in 2007. However, she could not recall the specifics of the conversation.**

Please refer to the complainant's verbatim IAB interview transcription for additional information.

During the complainant's IAB interview, Sergeant Chevalier made arrangements with the complainant to interview the [redacted] These interviews were to take place by telephone on Tuesday, September 22, 2009. On that date, several attempts were made by IAB Sergeant Irma Chevalier to contact the complainant, but she did not answer her telephone.

Subject Eckstrom's Statement

The following summary is taken from the subject IAB interview under Job ID number 27060. The Scientific Service Bureau inservice for September 18, 2007 [Exhibit B] indicates the subject worked on September 18, 2007 and was assigned to respond to the complainant's apartment based on a Print Deputy Request form [Exhibit C] to locate fingerprint evidence.

According to Subject Eckstrom, due to the events occurring approximately two years ago, he could not specifically recall going to the complainant's apartment in 2007 and he was unable to identify the complainant from her DMV photograph [Exhibit D]. He vaguely recalled going to an apartment on [redacted] in [redacted] in 2007, based on a Print Deputy Request form [Exhibit C] provided to him during the IAB interview. He recalled a female Hispanic women in her early to mid thirties lived in an apartment at the location with [redacted]. He could not recall the sex of the [redacted] or if he acquired any fingerprints from the location.

The subject indicated leaving and coming back to the apartment with two large pizzas he had purchased for cash from the locale Pizza Hut restaurant. He brought the pizzas because he felt sorry about the deplorable living conditions the [redacted] were living in. He stated [Page 15], "I recall going to a very -- how should I say? Ghetto gang-infested location. The living conditions were deplorable or, I mean, for those [redacted] is what I was thinking about or what I was looking at. I don't recall if I got prints or was even able to even attempt to get prints. I don't recall, but I do remember seeing all those [redacted] running around in this apartment that it -- it -- if you guys saw it, it's really heart-wrenching."

The subject indicated he was let back into the apartment with the pizzas by one of the [redacted] and placed the pizzas on the kitchen counter that was near the front door. He did not walk any further into the apartment than the kitchen area and left shortly after having a brief conversation with a woman. He denied ever inquiring from this women how many bedrooms the apartment had or speaking with this women in any of the bedrooms.

The subject denied ever touching the women's breast or any part of her body other than shaking her hand when he introduced himself during his first visit. He denied ever telling her that he found her attractive, and wanted to establish a romantic relationship with her. He denied staring at her breast during his contact with this women or pulling down her blouse.

The subject denied returning to the complainant's apartment, but did recall handling other fingerprint request in and around the complainant's apartment complex. He could not recall if he telephoned the complainant after his initial contact on September 18, 2007. He also denied, as alleged by the complainant, telephoning her the day after, on September 19, 2007.

IAB note: The subject's County cell phone records [Exhibit F, page 9] indicate he telephoned the complainant on September 19, 2007, which lasted approximately eight minutes. He also telephoned the complainant on:

- September 24, 2007 [Page 11] 2 minutes
- September 25, 2007 [Page 11] 2 minutes
- September 27, 2007 [Page 13] 2 minutes
- Twice on October 12, 2007 [Page17] 1 minute each
- October 18, 2007 [Page 17] 2 minutes


Leroy D. Baca, Sheriff

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



October 28, 2009

Deputy David Eckstrom, #[redacted]

Dear Deputy Eckstrom:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business November 19, 2009.

An investigation under File Number IAB 2239239, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or between September 18, 2007 and November 2007, while assigned to gather fingerprint evidence from the home of Ms. [redacted] following a burglary, you failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession and/or failed to treat Ms. [redacted] in a courteous and/or respectful manner, as evidenced by, but not limited to:

   a) making inappropriate comments or asking inappropriate questions of Ms [redacted] on September 18, 2007, including but not limited to, did she live alone or with a [redacted] and/or did her [redacted] have different [redacted] and/or could you have a relationship with her, and/or telling her you found her attractive, and/or;

b) returning to Ms. [redacted] home approximately 20 minutes after leaving on September 18, 2007, and bringing two pizzas for Ms. [redacted] and then telling Ms. [redacted] you had something urgent to tell her and needed to speak privately with her away from the [redacted], and/or;

c) staring at Ms. [redacted] breasts while making the comment, "very good," and/or;

d) asking Ms. [redacted] to expose her breasts to you and/or asking Ms. [redacted] if you could touch her breasts, and/or telling Ms. [redacted] the only thing you wanted was to see and/or touch her breasts and then you would leave, and/or;

e) reaching over and pulling Ms. [redacted] blouse down, partially exposing her bare breast, and/or;

f) calling Ms. [redacted] at her residence approximately 20 minutes after leaving her home the second time on September 18, 2007, and then calling Ms. [redacted] again on multiple occasions during September and October 2007, and/or;

g) returning to Ms. [redacted] home approximately two weeks after September 18, 2007, and standing outside her bathroom door while she was showering, and/or;

h) calling Ms. [redacted] approximately 20 minutes later and talking to her in a sexual manner, asking her such things as, but not limited to, had she touched her breasts and/or her private parts in a sexual manner while in the shower, and/or;

i) sometime on or between September 2007 and November 2007, driving your unmarked Sheriff's van to Ms. [redacted] home on at least two occasions, and parking nearby, causing Ms. [redacted] to become afraid.

Your above conduct runs counter to this Department's Core Values, Mission and Creed, and has damaged the Department's reputation and brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During an Internal Investigation, on or about August 5, 2009, during your subject interview, you made false and/or misleading statements to investigators, including, but not limited to:

   a) that you did not ask Ms. [redacted] to step into one of the bedrooms to speak privately with her on September 18, 2007, and/or;

   b) that you did not ask Ms. [redacted] to be with you in a dating relationship, and/or;

   c) that you did not stare at Ms. [redacted] breasts and/or did not make the comment, "very good," while staring at her breasts, and/or;

   d) that you never asked Ms. [redacted] to expose her breasts to you, and/or;

   e) that you never pulled Ms. [redacted] blouse down to expose her bare breast, and/or that you never touched Ms. [redacted] in that manner, and/or;

   f) that after you left Ms. [redacted] home the second time on September 18, 2007, that you never made contact with Ms. [redacted] again, and/or;

   g) that you do not recall going back to Ms. [redacted] home approximately two weeks after September 18, 2007, and standing outside her bathroom door while she was taking a shower, and/or;

   h) that you do not remember calling Ms. [redacted] and asking her if she touched herself in a sexual manner while in the shower.

[redacted]



[redacted]

incidents under IAB File Numbers [redacted]2239239 are exactly the same or contain the same common thread. Each of the three female complainants have filed separate complaints of essentially the same behavior, that you asked them to expose their breasts to you, thereby lending credence to their allegations. Thus, you have demonstrated an ongoing pattern of misconduct. This is simply not acceptable behavior by anyone, and particularly not by a deputy sheriff, and therefore cannot be tolerated.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Dennis Burns on November 17, 2009, at 0900 hours, in his office, which is located at Twin Towers Correctional Facility, 450 Bauchet Street, Los Angeles, Room E801. If you are unable to appear at the scheduled time and wish to schedule some other time prior to November 17, 2009, for your oral response, please call Chief Burns' secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Burns' secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Burns' office by no later than November 17, 2009.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Karyn Mannis

Karyn Mannis, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

KM:lh

c: Advocacy Unit
Employee Relations Unit
Chief Dennis Burns, Custody Operations Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2239239)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

October 26, 2011

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***DAVID ECKSTROM*** *for a hearing on his* ***discharge****, effective December 4, 2009, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 09-1508**.

The Civil Service Commission, at its meeting held on October 19, 2011, approved findings in the above-entitled case. The objections submitted were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure, as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

c: David Eckstrom
Richard Shinee
Daniel C. Carmichael
Elwood B. Hain

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the **discharge**, effective December 4, 2009, from the position of Deputy Sheriff, Sheriff's Department, of:

DAVID ECKSTROM
(Case No. 09-1508)

ORDER OF THE CIVIL SERVICE COMMISSION

On October 19, 2011, the Civil Service Commission of the County of Los Angeles, having read the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor, over-ruled the petitioner's objections and adopted, as its final decision, the Findings of Fact, Conclusions of Law, and the recommendation of its duly appointed Hearing Officer, Elwood B. Hain, to sustain the Department in the discharge.

Dated this 26th day of October 2011.

LYNN ADKINS, President

VANGE FELTON, Member

CAROL FOX, Member

(ABSENT)
Z. GREG KAHWAJIAN, Member

EVELYN V. MARTINEZ, Member

LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION

In the Matter of)
)
DAVID ECKSTROM)
)
Appellant) HEARING OFFICER'S
) FINDINGS OF FACT,
vs.) CONCLUSIONS OF LAW AND
) RECOMMENDED DECISION
SHERIFF'S DEPARTMENT)
)
Respondent)
)
CASE NO. 09-1508)
)

APPEARANCES

For the Appellant: Richard Shinee
Audra Call
Green & Shinee, P.C.
16055 Ventura Boulevard, Suite 1000
Encino, California 91436

For the Respondent: Daniel C. Carmichael, III
Law Offices of William Balderrama
100 South Fremont Ave.
Building A1, Suite 1122
Alhambra, CA 91803

Hearing Officer: Elwood Hain

Hearing Dates: August 2, August 9, August 10 and November 2, 2010; March 8 and March 10, 2011.

ISSUES

1. Are the allegations contained in the Department's letter of December 7, 2009, true?

2. If any or all are true, is the discipline appropriate?

3. Did the Sheriff's Department violate the Peace Officer's Bill of Rights Act, Government Code §§ 3300, 3304D and 3309.5 when they discharged the appellant on December 4, 2009?

4. If so, what is the appropriate remedy?

At the conclusion of the evidence, Appellant withdraw the issue of the peace Officer's Bill of Rights Act from consideration by the Hearing officer.

EXHIBITS

Department's Exhibits:

1. Letter of Discharge, dated December 7, 2009
2. Letter of Intent to Discharge, October 28, 2009
3. Disposition Sheet
4. Guidelines for Discipline
5. Investigator's Log and Audio/Video Tracking Sheet
6. IAB Table of Contents
7. Personnel Investigation Report
8. IAB Investigative summary
9. Transcript of IAB interview of Complainant [redacted]
10. Transcript of IAB interview of David Eckstrom
11. Transcript of IAB interview of [redacted]
12. Incident report under file number 408-22239-2833-444, dated November 20, 2008, and memo from Captain William M. Ryan to Chief Cecil W. Rambo, Jr., dated January 5, 2009, Re: Allegation of Criminal Conduct by a Deputy Sheriff

13. CSI/Identification Section In-service for September 18, 2007

14. Print Deputy Request Form, dated September 18, 2007

15. DMV photograph of [redacted]

16. Incident report for burglary of [redacted] apartment under file number 407-15682-2833-068 burglary report taken on September 13, 2007

17. Eckstrom's County cell phone records between September and December 2007

18. DIRC's information on complainant [redacted]

19. Help Others Care Center sign in sheet and Team meeting Agenda, dated November 14, 2007

20. Miscellaneous Documents in IAB investigatory package

21. Diagram of [redacted] apartment

22. Cell phone and pager archive

23. Telephone roster 1/16/07

24. Telephone roster 8/09/07

25. Cell phone roster 11/17/07

26. Telephone roster 7/30/08

27. Telephone roster May 08 last 8/01/08

28. Phone roster Aug 08 last 8/01/08

29. Projected schedule for latent print section, Aug 2007

30. Projected schedule for latent print section, Sept 2007

31. Projected schedule for latent print section, Oct 2007

32. SSB cell phone roster modified 1/13/2007

33. Case journal, URN 408-22239-2833-444, Detective Gomez L. #[redacted]

34. Notice of Imposition, dated July 23, 2008

35. Written reprimand dated May 11, 1998

36. Declaration of [redacted] with attached employee information forms.

Appellant's exhibits:

1. Disposition sheet

2. Personnel investigation Form

3. Investigative Summary

4. Transcript of Complainant [redacted] Interview with IAB Investigator Chevalier

5. Transcript of Deputy Eckstrom's interview with IAB Investigators Flores and Garcia

6. Transcript of Witness [redacted] Interview with IAB investigator Garcia

7. LASD Incident Report and Summary (Relating to claimed assault by Deputy Eckstrom)

8. Photographic Line-Up (Six Pack) Admonition Form and Pictures

9. LASD incident Report and Supplemental Reports (Relating to original burglary claim by [redacted]

10. Diagram of [redacted] apartment

11. Diagram of Witness [redacted] bedroom

12. Color photo identification set; black and white photo identification set

13. Team meeting, Nov 17, 2007

14. (Not admitted)

15 - 20. Photographs of Sheriff's white vans

INTRODUCTION

By letter dated December 7, 2009, the Sheriff's Department ("Department" or "Respondent") notified David Eckstrom ("Appellant"), that he was dismissed from his position as a deputy sheriff as of December 4, 2009. As detailed in the Letter of Imposition, Department's Exh. 1, the Department based its decision on its conclusions that Appellant behaved immorally and discourteously toward [redacted] while assigned to gather fingerprint evidence in her home and that he thereafter lied about the events involving Ms [redacted]

Specific allegations of misconduct toward Ms [redacted] were that Appellant

a. Made inappropriate comments or asked inappropriate questions of Ms [redacted] on September 18, 2007, including whether she lived alone or with a [redacted] whether her [redacted] had different fathers, whether he could have a relationship with her and that he found her attractive.

b. Returned to Ms [redacted] home approximately 20 minutes after leaving it, bringing two pizzas for Ms [redacted] children and then telling her that he had something urgent to tell her and needed to speak privately with her away from the [redacted]

c. Stared at Ms [redacted] breasts while commenting "Very good."

d. Asked Ms [redacted] to expose her breasts to him, or asked her if he could touch her breasts, or told her he wanted to see or touch her breasts and then he would leave.

e. Pulled Ms [redacted] blouse down, partially exposing her bare breast.

f. Called Ms [redacted] at her residence approximately 20 minutes after leaving her home the second time on September 18, 2007, and thereafter called her on multiple occasions during September and October 2007.

g. Returned to Ms [redacted] home approximately two weeks after September 18, 2007, and stood outside her bathroom door while she was showering.

h. Called Ms [redacted] approximately 20 minutes later and talked to her in a sexual manner, asking her such things as whether she touched her breasts or her private parts in a sexual manner while in the shower.

I. During the period September through November 2007, drove his unmarked Sheriff's van to Ms [redacted] home on at least two occasions and parked nearby, causing Ms [redacted] to become afraid.

Specific allegations of making false statements during an internal investigation interview on August 5, 2009, were his statements

a. That he did not ask Ms [redacted] to step into one of the bedrooms to speak privately with her on September 18, 2007.

b. That he did not ask Ms [redacted] o be with him in a dating relationship.

c. That he did not stare at Ms [redacted] breasts and did not make the comment "very good" while staring at her breasts.

d. That he never asked Ms [redacted] to expose her breasts to him.

e. That he never pulled Ms [redacted] blouse down to expose her bare breast and that he never touched her in that manner.

f. That after he left Ms [redacted] home the second time on September 18, 2007, he never made contact with Ms [redacted] again.

g. That he did not recall (in response to a "do you recall" question) going back to Ms [redacted] home approximately two weeks after September 18, 2007, and standing outside her

bathroom door while she was taking a shower.

h. That he did not remember (in response to a "do you remember" question) calling Ms [redacted] and asking her if she touched herself in a sexual manner while in the shower.

The Letter of Imposition asserted that on two occasions in the past, female complainants had alleged that Appellant had asked them to expose their breasts to him, demonstrating an ongoing pattern of misconduct that lent credence to Ms [redacted] allegations. The Letter of Imposition said that [redacted]

Appellant appealed his dismissal.

BURDEN OF PROOF

The Civil Service Rules provide that the Department shall bear the burden of proof in this matter. Appellant bears the burden of proving asserted affirmative defenses. (Civil Service Rule 4.12)

EVIDENCE

The Department called 7 witnesses. The Appellant called 2. The Appellant elected not to testify. Of the nine witnesses for both parties, only two were percipient witnesses, the complaining witness, [redacted] and her [redacted]

The Department's Case

[redacted]

The main witness for the Department at the hearing was [redacted] who testified through an interpreter although she said she understood some English. Her primary language is Spanish.

Ms [redacted] testified that on September 18, 2007, Appellant came to her apartment in Compton to try to collect fingerprints as a follow up to a recent burglary of the apartment. Another deputy had taken the initial report three or four days earlier. When Appellant arrived, Ms [redacted] was there with her [redacted] who ranged in age from about [redacted] at that time. Her [redacted] then about [redacted], answered the door and admitted Appellant to the livingroom. Appellant identified himself as a detective who had come to get fingerprints. Appellant seemed surprised that there were so many [redacted] in the apartment. He asked Ms [redacted] [redacted] then age [redacted] if they were all Ms [redacted]. [redacted] replied that they were. He expressed surprise, asked the question again and got the same answer. He then asked [redacted] if Ms [redacted] was a [redacted] told him she was. Ms [redacted] asked [redacted] if Appellant was asking personal questions. [redacted] said "yes." Ms [redacted] directed [redacted] to tell him that she no longer wanted him to continue the investigation because they were not going to get her property back and he was already asking about things that had nothing to do with investigating the burglary. She told [redacted] that he was investigating her personal life, that he had a different intention. When [redacted] asked Appellant to leave, he did.

He returned to her apartment fifteen or twenty minutes later. He knocked on the door and [redacted] asked who was there. Appellant said it was the deputy. [redacted] admitted him. Ms [redacted] came

to the front of the apartment from another room. Appellant was carrying two boxes of pizza. He said they were for the children to eat. He tried to talk with Ms [redacted] She told [redacted] to thank him for the pizza. He responded that he had come back because he had something important and personal to tell her. Ms [redacted] asked, through [redacted] what he wanted to talk about. He repeated that it was very important and that he did not want to tell her in front of the [redacted] He said he wanted to speak to her alone and asked where they could talk. He looked to the left. The room to her bedroom was wide open. She wanted to know what was important. As they walked to the room, Appellant was telling her that, if she wanted, he could help her by protecting her. After they entered the room he tried to close the door a little. They were the only two in the room. Then he told her that he would leave if she would show him her breasts. That made her afraid. She told him to have some respect, that her children were present and that he should leave. He asked if he could touch her and said if he could hold her he would leave. She shook her head "no." He took a step forward, grabbed her shirt with two fingers and looked inside to see her breasts. Ms [redacted] crossed her arms by her breasts.

At that time her son [redacted] then about age [redacted] opened the door. [redacted] came behind him to get him. She returned to the livingroom with [redacted] Appellant said he was leaving but that he would continue to visit her on another occasion. He said nothing else, but touched his genital area for a few seconds, moving his hand side to side and down. Then he left.

Ten or fifteen minutes after Appellant left, she received a telephone call. [redacted] answered the phone and handed it to Ms [redacted] The caller ID showed the call was from the Compton Sheriff's Department. The person on the phone identified himself as the deputy who was investigating the burglary. She recognized Appellant's voice. He said he wanted to speak to

her. She was unable to answer and said nothing.

Within the next week, Appellant attempted to visit her again. One of the [redacted] admitted him. Ms [redacted] was in the shower in the bathroom. Her son [redacted] told her the deputy wanted to speak to her. She told [redacted] that she was in the shower, not coming out, and that the deputy should leave. Appellant knocked on the door, called her [redacted] and identified himself as the deputy. She recognized his voice. He said he wanted to talk to her. Through [redacted] Ms [redacted] told him to leave. Ms [redacted] said she was had just gotten into the shower and was not coming out. When she did come out of the bathroom, Appellant had left.

About 20 minutes later Appellant telephoned her. She answered the phone. Appellant said he had left because he knew she was taking a shower. He wanted to know what areas of her body she would touch when she was in the shower. He was making moaning sounds as he said this. She thought they indicated that he was masturbating. He said that he liked to do things and asked she liked to do it from the back. She said she was going to hang up, and she did. The telephone ID said either "private call" or "blocked call."

Appellant called several more times in subsequent days. She did not speak to him. She believes he was the caller because the calls were always shown as blocked or restricted.

When Appellant left after his first visit to Ms [redacted] apartment, she saw his car. It was a white or cream-colored Astro or GMC van. The passenger door said "Sheriff" and had a circle and a star.

Two or three weeks after Appellant first came to her apartment, she saw him parked on the street beside the apartment. She was coming home from an errand with all the [redacted] As she started to turn into the apartment parking lot she saw the van. As a result she did not turn but

kept going straight. She was on Wilmington. He was parked on Center Avenue in the same van. She saw him in it. When she returned half an hour later, the van was no longer there.

On the day Appellant came to take fingerprints, [redacted] saw Ms [redacted] very nervous and asked what had happened. Ms [redacted] told her it was something that had happened with the police officer, that he was coming with another intention. [redacted] wanted to know what they were going to do, that she had to report the incident. They said nothing else about the incident.

The first person outside the family that Ms [redacted] told about the event with Appellant was [redacted] a case worker who had a case open on her [redacted] while they were in foster care. The [redacted] had been removed from her in October 2005 or 2006 and returned on June 6, 2007. She spoke to [redacted] two or three days after Appellant's first visit. The social worker had told her she had to report anything that might happen while the [redacted] were present.

About the same time, she also spoke to [redacted] who works for the county at El Centro del Pueblo, which provides help for [redacted] who have been in foster homes. She told [redacted] what Appellant had done.

About a year after Appellant first came to her apartment, she spoke to Captain Ross, the Salvation Army pastor at the Salvation Army center in Compton. She spoke to him because she had a bout of depression and she wanted to tell her problems to someone. Ross told her there were spiritual programs and that he would help her get help. Ross said he would speak to a police sergeant from Compton and asked her to wait ten or fifteen minutes for the sergeant to arrive. She waited and a male sergeant named Sugar or something like that arrived from the Sheriff's Department. [Other evidence shows that Lt. Reinhold Schuerger was the man who talked to her at that time.] He did not speak Spanish, so a Salvation Army worker translated. She told him

what had happened with Appellant.

Soon after, she spoke to a female detective named Gomez at the Compton Sheriff's station. Gomez showed her a set of pictures. She recognized one of the pictures but was not sure whether it was Appellant. About three weeks or a month later she was also interviewed by another female detective, whose name she could not recall. When prompted, she recognized the name Chevalier as that of the second detective.

The reason she waited about a year to report the matter to the police was that she did not want them to take her [redacted] away again. She thought they could do that again.

Cross Examination

Ms [redacted] was [redacted] years old when the hearing began. She had been [redacted] when the events involving Appellant occurred. In September 2007 she had lived in her [redacted] apartment for about six months. She still lived there at the time of the hearing. Her [redacted] were still in [redacted] when she first rented the apartment. She had been without them for more than six months.

[redacted]

She was interviewed for one or two hours in Spanish by Detective Lorena Gomez about the incident involving Appellant. She told Gomez everything that happened on the day Appellant came for fingerprints. She did not tell her about the last time Appellant went to the apartment because Gomez did not ask and at the moment she did not remember. That was the time she had been in the van with all her [redacted] and had seen Appellant outside the apartment about 3:00 or 4:00 in the afternoon. Appellant was parked and eating in his van.

Ms [redacted] was also interviewed by Detective Chevalier in Spanish. She told Chevalier the same things she had told Gomez.

Ms [redacted] has had other negative experiences with police officers. On once occasion she called the police because [redacted] had gotten lost while the family was at a church in North Hollywood to be fed. The police report indicated that the [redacted] was hungry, but he was not because he had just eaten at the church. This event was several months before her [redacted] were taken from her..

[redacted]



[redacted]

Ms Alvarez was surprised when Appellant asked her on the telephone, several days after he came for the fingerprints, if she liked anal sex. She told both Detective Gomez and Detective Chevalier about his asking her that. She told them because it made her feel bad that he had asked those questions, not because the questions shocked her.

Ms Alvarez remembered testifying that when Appellant came with the pizza, her [redacted] opened the door for him because she was in the back. She denied that she had told Detective Gomez that she herself had been the one who opened the door. Examining her statement to Detective Gomez, she denied telling Gomez that she was the one who went to the door to let him in, despite a statement to that effect in Gomez' incident report. See App Exh 7, p. 5, para 1. She did not recall telling Detective Chevalier that it was [redacted] who opened the door on that occasion. Dep Exh 9, p. 3, an English transcription of an audio recording of Chevalier's Spanish interview with Ms [redacted] indicates that Ms [redacted] told Chevalier that [redacted] opened the door.

Cross-examination explored several inconsistencies between Ms [redacted] trial testimony and her earlier statements:

1. Ms [redacted] testified that her [redacted] opened the door for Appellant when he came back with the pizza because she was in the back of the apartment. Detective Gomez' summary of what Ms [redacted] told her said that Ms [redacted] had reported that she opened the door herself. Dep Exh 7 and App Exh 12. Ms [redacted] tape recorded and translated statement to Detective Chevalier said that it was [redacted] who opened the door on that occasion. Dep Exh 4 and App Exh 9.

2. Ms [redacted] statement to Detective Gomez says the children were excited about the detective's gun and asked him about it. App Exh 7, p. 5; Dep Exh 12, p. 8. Ms [redacted] testified that she did not notice whether Appellant wore a gun when he came to her apartment, but that she asked [redacted] who said that she did see one. She later testified that the [redacted] were grabbing at his pockets or something like that. She could not remember what she told Gomez.

3. Ms [redacted] told Detective Gomez that Appellant asked her to *show* him her breasts. App Exh 7, p. 6; Dep Exh 12, p. 9. Detective Gomez testified in the hearing to the same effect, saying that Ms [redacted] never told her that Appellant wanted to touch her breasts. Ms [redacted] told Detective Chevalier that Appellant asked to *touch* her breasts. She testified at trial that he told her wanted to *see and touch* her breasts.

4. Ms [redacted] told Detective Gomez that Appellant pulled at the bottom of her blouse while she had her arms crossed over her breasts. App Exh 7, p. 6; Dep Exh 12, p. 9. Her statement to Detective Chevalier said Appellant pulled her blouse down but did not specify how. At hearing, Ms [redacted] demonstrated on Appellant's counsel, Ms Call, how Appellant pulled her blouse down. Using two fingers, she pulled Ms Call's blouse out (not down) from the top and peered in.

5. Ms [redacted] told Detective Gomez that she put her arms across her breasts before Appellant tried to pull her blouse down. On cross examination at the hearing she said her hands had been at her sides when Appellant pulled her blouse and then she folded her hands across her chest.

6. Ms [redacted] told Detective Gomez that Appellant came toward her in the bedroom and tried to hug her but she walked away. App Exh 7, pp. 5-6; Dep Exh 12, pp. 8-9. When Detective Chevalier asked her about that part of the event, which she had read in Gomez' summary, Ms [redacted] denied that Appellant tried to hug her. At trial she denied telling Gomez that Appellant tried to hug her.

7. Ms [redacted] testified that just before Appellant left the bedroom he touched his genital area briefly, rubbing it side to side and downward. She also testified that she saw a bulge in his

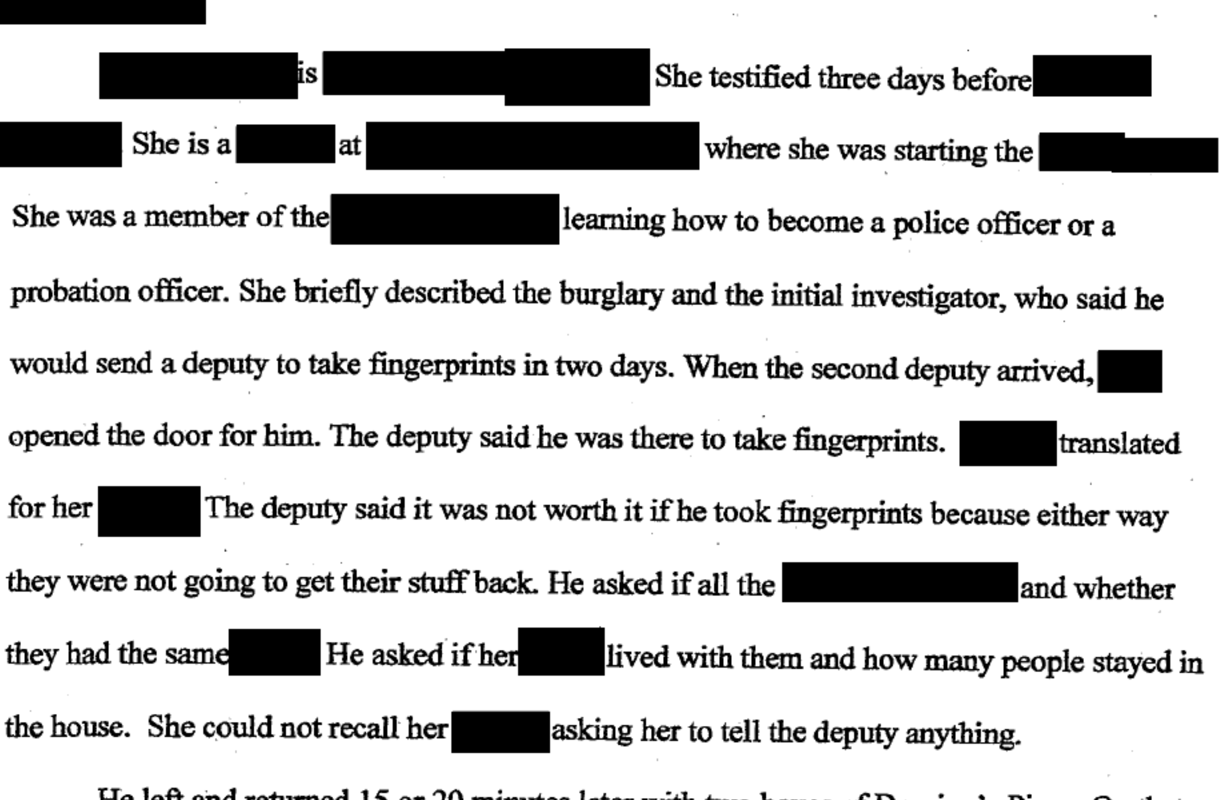
pants. In her interview with Detective Chevalier, she said that he touched himself below the belt. However Ms [redacted] told Detective Gomez that Appellant reached for his belt buckle as if he were going to undo his pants. Gomez testified that Ms [redacted] never said anything in the initial interview about Appellant touching his genital area nor anything indicating that he had an erection.

8. Ms [redacted] told Detective Gomez that when Appellant asked to speak to her privately, she went down the hallway to her son [redacted] room and Appellant followed. App Exh 7, p. 5; Dep Exh 12, p. 8. She told Detective Chevalier that she followed Appellant to her son's room. App Exh 4, p. 15; Dep Exh 9, p. 15. At the hearing, she testified that she followed Appellant to her own bedroom. When the inconsistency of her testimony with Gomez' report was pointed out, she said that she might have said what Gomez recorded because her children sleep in her room with her. When counsel pointed out the inconsistency between her recorded interview with Detective Chevalier and her testimony, she said Detective Chevalier got it wrong.

9. Ms [redacted] told Detective Chevalier that she saw Appellant in a dark-colored car, parked outside her apartment by her car at 3:00 a.m. Although the Department did not alleged this act as a basis for its discharge and introduced no evidence about it, Appellant's counsel cross-examined Ms [redacted] about her statement to Chevalier. In the interview Ms [redacted] said that when she peered out from her door, she saw a suspicious car behind where she parked. The person in the car looked toward the apartment. She said, "I recognized his face, it was him because who else could it be." On cross-examination she said she saw the car but did not see Appellant, although she had told someone she thought it was Appellant. She thought it was him because of all that had happened. She added that she could not see the person in the car because

the window was foggy. When pressed, she said she could not see if there was a person in the car. Asked why she would have told Chevalier that she had seen the person in the car, she responded that she did not remember saying that but had told Chevalier that she could not see the person well.

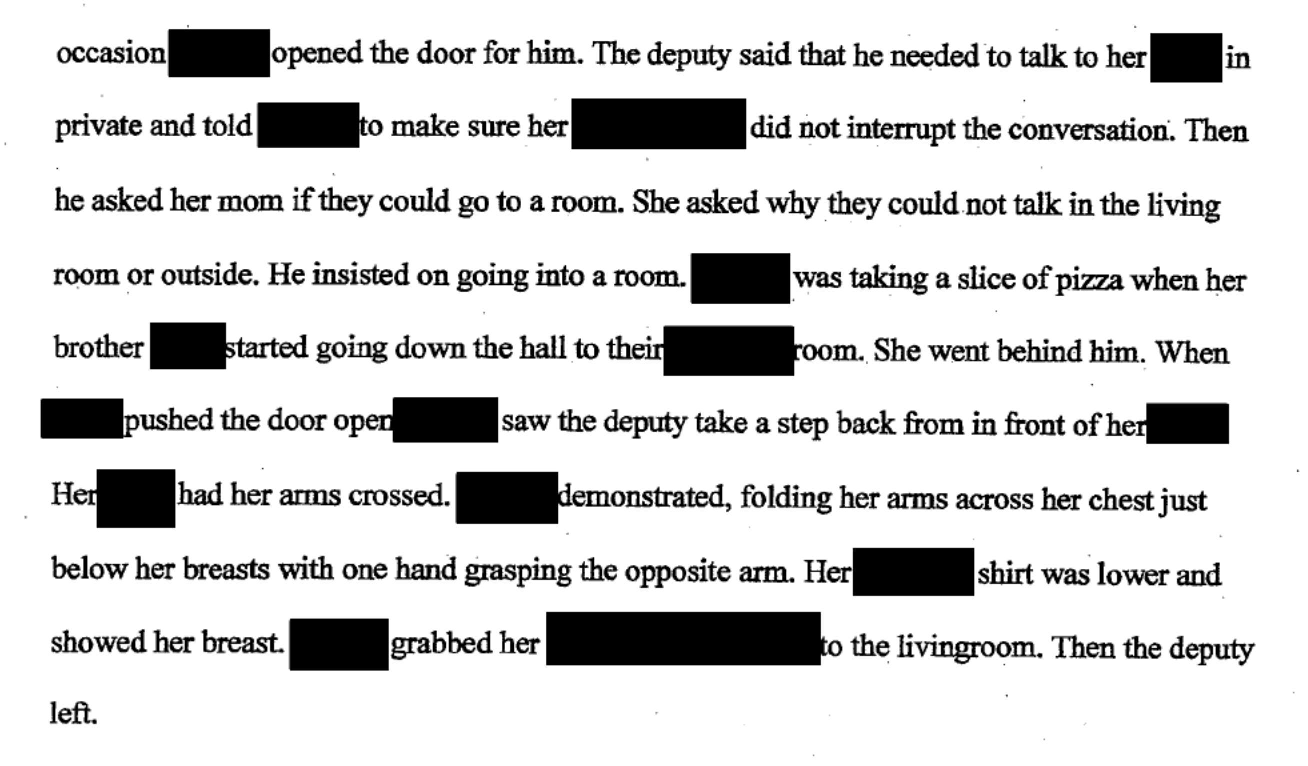
10. Ms [redacted] testified that two or three weeks after Appellant first came to her apartment, she saw him parked on the street beside the apartment as she was coming home from an errand with all her children. In her interview with Detective Chevalier, Ms [redacted] said that her daughter [redacted] had seen Appellant's face but that she herself had not. On cross-examination at the hearing, she testified that she saw his face clearly.



[redacted]

[redacted] is [redacted] She testified three days before [redacted] She is a [redacted] at [redacted] where she was starting the [redacted] She was a member of the [redacted] learning how to become a police officer or a probation officer. She briefly described the burglary and the initial investigator, who said he would send a deputy to take fingerprints in two days. When the second deputy arrived, [redacted] opened the door for him. The deputy said he was there to take fingerprints. [redacted] translated for her [redacted] The deputy said it was not worth it if he took fingerprints because either way they were not going to get their stuff back. He asked if all the [redacted] and whether they had the same [redacted] He asked if her [redacted] lived with them and how many people stayed in the house. She could not recall her [redacted] asking her to tell the deputy anything.

He left and returned 15 or 20 minutes later with two boxes of Domino's Pizza. On that



occasion [redacted] opened the door for him. The deputy said that he needed to talk to her [redacted] in private and told [redacted] to make sure her [redacted] did not interrupt the conversation. Then he asked her mom if they could go to a room. She asked why they could not talk in the living room or outside. He insisted on going into a room. [redacted] was taking a slice of pizza when her brother [redacted] started going down the hall to their [redacted] room. She went behind him. When [redacted] pushed the door open [redacted] saw the deputy take a step back from in front of her [redacted] Her [redacted] had her arms crossed. [redacted] demonstrated, folding her arms across her chest just below her breasts with one hand grasping the opposite arm. Her [redacted] shirt was lower and showed her breast. [redacted] grabbed her [redacted] to the livingroom. Then the deputy left.

The deputy called some time later, though she could not say how long after he had left. She knew it was him because the caller ID said "Sheriff's Department Compton." [redacted] answered the telephone. He said, "Hi. I'm Deputy Pizza." He asked to talk to her [redacted] told him her [redacted] was not home. He said, "Okay. Let her know I called and have something important to tell her." That was the only time she spoke to him on the phone.

The day Appellant came to take the fingerprints [redacted] looked out the door when he left and saw him get into a white van in the parking lot. The van had the word "Sheriff" on the driver's door.

The day Appellant brought the pizzas to the apartment, [redacted] mother talked to her about the events. Her [redacted] told her she was too young to understand, but that Appellant brought the pizza and something was wrong. [redacted] was figuring out in her own mind that he was asking personal stuff about how many [redacted] had and whether her [redacted] lived with

them. His questions made her mad.

She saw Appellant again on another day. The family was driving home in their van. Her [redacted] was driving and her [redacted] was on the passenger side in front. [redacted] was in back. She saw Appellant's white van parked outside their apartment complex on Center Street. She saw a bald man in the van. ([redacted] gestured at the hearing, indicating Appellant.)

[redacted] was interviewed by phone by someone from the Sheriff's Department. She gave truthful answers.

Cross-examination

[redacted] never went to the Sheriff's station and never met detective Lorena Gomez. She did talk to Gomez by telephone for about five minutes.

During part of 2007 she did not live with her [redacted] She was told it was because the family had nowhere to live. During the time she was away from her [redacted] she lived in Southgate with a foster parent.

[redacted] did not practice what she would say at the hearing. The last time she talked about the matter with her mother was the day Appellant brought the pizza. She talked to no one else about the matter except when she met with the Sheriff Department's attorney, Mr. Carmichael, at the Compton Sheriff's station. No one else was present for that meeting.

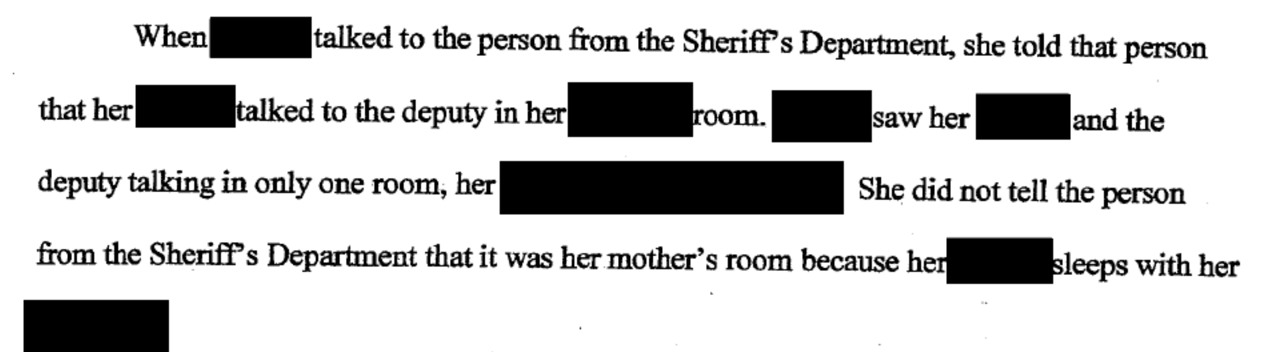
[redacted] did not remember telling the female detective on the phone that a month before that interview her [redacted] had talked to her about what had happened when the "pizza deputy" came to the house.

The day she saw Appellant's van, the family car would have turned left to enter their apartment complex. Appellant's van was on the right side of the street, opposite where the

family would turn to enter the complex. The family car approached the white van from the front. The family car is a minivan. She was on the driver's side in the back seat. The driver of the minivan has no headrest. She could see out the front of the minivan by looking around to the right of her [redacted] All [redacted] kids were in the van. The [redacted] was in a baby seat to her right. [redacted] who was taller than [redacted] was in the front passenger seat. [redacted] looked out the window to his left. [redacted] told her mother the deputy was standing outside the apartment, meaning he was parked there.

It did not take her long to recognize the white van. She could see the head and part of the left side of the face of the person in the car. The van had the word "Sheriff" on the bottom of the driver's door. She did not see a star on the door.

When, earlier, she had seen the van in the apartment complex parking lot it had had the word "Sheriff" on the driver's door, at the bottom.



When [redacted] talked to the person from the Sheriff's Department, she told that person that her [redacted] talked to the deputy in her [redacted] room. [redacted] saw her [redacted] and the deputy talking in only one room, her [redacted] She did not tell the person from the Sheriff's Department that it was her mother's room because her [redacted] sleeps with her [redacted]

When she was getting a piece of pizza, she saw her [redacted] walk with the deputy to the room. Her [redacted] was following the deputy.

When her brother [redacted] came in the door where her [redacted] and the Appellant were talking, she could see Appellant from the side. Her [redacted] was to his front. His hands were on the top of her [redacted] shirt. She saw him move his hands back from the top of the shirt and

take a step back.

Her [redacted] opened the door for Appellant when he first came to the apartment. When he returned with pizzas, [redacted] opened the door. Her [redacted] did not open it either time. Her [redacted] was at home when [redacted] opened the door, but [redacted] was not sure where in the apartment she was.

Peter Kergil

Mr. Kergil is the supervising forensic identification specialist in the Sheriff's Department. He testified as follows:

Appellant was assigned to the Latent Prints Section of the Scientific Services Bureau in August 2007. After three weeks of training and field supervision, Appellant was assigned cases of his own. Assignment records show that he was assigned to take fingerprints at the apartment of [redacted] on September 18, 2007. The assignment was canceled by the victim. The documents do not show whether the victim called the station to cancel or told the deputy, but it is quite rare for victims to call the station to cancel. (See Dep Exh 14)

Shortly after being assigned to the Latent Prints Section, Appellant was assigned a cell phone with the number [redacted]. The telephone bills link that number with another deputy, [redacted]. The disparity is normal as the Department assigns a name to a cell phone when it is first put into service with the telephone company. Thereafter the telephone company records continue to link the originally registered name with that telephone number. When the department reassigns a cell phone to another deputy it does not change the name with the telephone company but does reflect the change on its own rosters of cell phones. The

department relies on the current roster to contact deputies in the field. (Dep Exhs 22 through 28 and Dep Exh 32)

Those rosters show that in January 2007 cell phone number [redacted] was assigned to Dispatch, which is common with spare cell phones. The roster for August 2007 shows that cell phone was assigned to [redacted] who joined the Latent Prints Section that month, as did Appellant. The rosters for September, October and November 2007 show the cell phone with that number was assigned to Appellant. Kergil did not know why the phone was reassigned to Appellant.

One cell phone number was shown on the rosters as assigned to both [redacted] and [redacted]. Another was shown as assigned to both [redacted] and [redacted]. Those entries indicate that the rosters contained errors.

Lieutenant Donna Lynn Copplin

Lieutenant Copplin is assigned to the Internal Criminal Investigative Bureau. She testified that the Bureau did not open a criminal investigation of Appellant and had no records pertaining to him. Lt. Copplin reviewed a criminal report on the matter. It consisted of the first report at the station and a supplemental report by the detective who did the follow up investigation. The report did not include enough information for a criminal case of sexual battery. If there had been a case it would have been a misdemeanor and the statute of limitations was about to expire.

Detective Lorena Gomez

Detective Gomez was told by Lt Reinhold Schuerger to call [redacted] about what she had reported at the Salvation Army. Gomez interviewed [redacted] She prepared a case journal, Dep Exh 33, to document what she did in the investigation. She identified Department Exhibit 12 as the report she wrote. In the interview she showed Ms [redacted] a set of six photographs of persons, including the person who went to her house to collect fingerprints from the burglary reported earlier. [redacted] was not able to identify appellant from the lineup.

Cross-examination:

Detective Gomez' first language is Spanish. She has used that language all her life. She has used it regularly in her work in the Sheriff's Department. She interviewed Ms [redacted] at the Compton station. Her [redacted] was not with her.

She reviewed her account of [redacted] description of the encounter in the bedroom and said she had written it the way [redacted] told it. When [redacted] said the children were excited by the deputy's "duty weapon" she probably used the Spanish word "pistola." [redacted] used the Spanish word for "breasts," not the Spanish slang equivalent of "tits."

<u>Chief Dennis Burns</u>

Dennis Burns is Chief of the Custody Operations Division in the Sheriff's Department. He was the decision maker in this case. He described the case review process, which he followed. He presented the case to Assistant Sheriffs Cavanaugh and Tanaka, who agreed with his recommendation to discharge Appellant.

Chief Burns read the case file. He believed [redacted] story was credible. Her [redacted] verified some of it. The telephone records lined up with the victim's story. They included one

long call to [redacted]' number and several short ones or calls that were not answered.

He also determined that the charge of failing to make statements or of making false statements in the internal investigation was true. He believed [redacted] and her [redacted] Appellant denied their version of events, so he made false statements.

He is familiar with the Guidelines for Discipline and used them in making his determination of discipline. He is also familiar with each of the policy manual provisions relied on in dismissing Appellant. Appellant violated the policy for General Behavior. The Department expects deputies not to ask members of the public to see their breasts or to touch their breasts. It expects them not to go back to a house after being told the occupants did not want prints taken.

He took aggravating and mitigating factors into account. The aggravating factors were: This was a very severe infraction. Appellant took no responsibility for his actions and lied about them. The degree of culpability was extreme. He was the only one culpable.

While this one event was sufficient to compel discharge, Burns reviewed Appellant's past performance and disciplinary history. He could not remember any prior commendations, but they would not have mattered in light of the egregious conduct in this matter. Appellant's disciplinary history solidified his decision. Appellant [redacted] When a person with a badge and a gun preys on women the only remedy is discharge.

Asked on cross-examination if having a husband in prison might cause a witness to be biased, Chief Burns responded that it might lead to a bias against the department but not against Appellant.

Commander William Ryan

Commander Ryan was the Captain of Compton Station at the time of the events leading to Appellant's discharge. One of his responsibilities was community relations. He had dealt with Captain Ross of the Salvation Army, which was located half a mile from the sheriff's station, about a question of response time to a burglar alarm. When he heard from Ross at a later date (November 7, 2008, he thought) that a lady at the Salvation Army claimed she had been sexually assaulted by a police officer, he asked Lt. Reinhold Schuerger to go the Salvation Army and look into it. Schuerger did so. Schuerger reported back that he had talked to Ross and the lady, who spoke mostly Spanish. Ryan decided to send a detective to follow up. At that time he did not know the identity of the officer accused of the assault. Detective Lorena Gomez talked with the lady and wrote a report. On the basis of that report, Ryan sent a memo to Region Chief Rhambo and recommended that Internal Criminal Investigation Bureau do an investigation. Lt Schuerger drafted the memo and Ryan signed it. See Dep Exh 12.

Cross-examination

Commander Ryan had no recollection of seeing a copy of a Team Meeting (App Exh 13) which contains allegations that Deputy [redacted] molested [redacted]

Exhibits

A few exhibits pertaining to telephone calls should be described. The incident report prepared in response to the burglary reported by Ms [redacted] includes her home phone number, [redacted]. (Dep Exh 16) The Print Deputy Request Form that directed Appellant to take fingerprints at Ms [redacted] home also contains her home phone number. (Dep Exh 14)

Appellant's Unit Personnel Record, dated April 10, 2006, lists his two home phone numbers and his wife's cell phone number, which will not be shown here out of concern for Appellant's privacy. (Dep Exh 36) The cell phone bills for cell phone number [redacted] show numerous calls, often several in a single day, to Appellant's two home numbers and his [redacted] cell phone number. Those same bills show that that cell phone called Ms [redacted] home number on seven occasions after September 18, 2007: September 19 (8 minutes); September 24 (2 minutes); September 25 (2 minutes); September 27 (2 minutes) October 12 (2 calls, 1 minute each) and October 18 (2 minutes). (Dep Exh 17). Cell phone number [redacted] called Appellant's home number and his [redacted] cell phone number on the same days it called Ms [redacted] number. (See Dep Exhs 22-28)

[redacted]

<u>Appellant's Case</u>

<u>Sergeant Aldo Iturriaga</u>

Aldo Iturriaga is a sergeant with the Sheriff's Department assigned to the Hall of Administration. He has worked in confinement facilities, among other assignments. Newer jails have "PODs" that hold several inmates. A POD is a big holding area where inmates do all their daily activities, such as meals, TV and showering. Entering a POD is not the same thing as entering a cell. But in a facility with PODs, a person must go into the POD in order to reach a cell. He did not believe there is a requirement that a male deputy be accompanied by a female deputy to enter a female POD.

Cross-examination

Sgt Iturriaga worked at the Biscailuz Center in 1985-86 and at Twin Towers in 2002-04. He never worked at Century Regional Detention Center. He does not know what policies were in effect at that center in 1994.

Deputy John Chun

Deputy Chun has worked as a deputy for 17 years, the last seven in the Scientific Services Bureau. In 2007 four white vans were assigned for the use of print deputies in the Bureau. Two were Ford F-150's and two were Astro Vans. The two F-150's and one of the Astro Vans are still in use and assigned to the bureau. None of them has any kind of logo or writing on the side, now or at any time in the past. Three days before testifying, he took photographs of one of the Bureau's F-150's and one of its Astro Vans (App Exh 15-20). All show plain white vans without logos or writing.

DISCUSSION

The primary witness in the case is [redacted] Ms [redacted] is obviously very unsophisticated. She had trouble answering questions precisely and consistently over the three year span between the incident and her testimony in the civil service hearing. Yet her core story was consistent and believable. It is corroborated on some points by the testimony of her daughter, [redacted] although it is impossible to believe either Ms [redacted] or her [redacted] when they say they have not discussed the case with each other since September 18, 2007. While Ms [redacted] testimony should be accepted with caution, and some parts must be rejected, much of her testimony is credible. Appellant's statement in the internal investigation corroborated Ms [redacted] story on at least one key point, Appellant's return to the house with pizza. And her story is corroborated by the telephone records that showed seven otherwise inexplicable calls from Appellant's cell phone to Ms [redacted] home phone.

While Ms [redacted] has had numerous encounters with police officers, those encounters do not, individually or collectively, indicate that she is biased against the Sheriff's Department, much less against Appellant. Her worst trauma in dealing with the authorities, the loss of her children to foster care, was inflicted by social workers rather than by the police. The one generalized grievance she did express with the police was that they did nothing when she called. Her story of the officer who, she claims, left sperm in her bathroom is strange in all respects but was not proven false nor shown to be rooted in, or the cause of, bias against police officers generally. Her demeanor in testifying did not suggest that she was biased against the Department or police officers.

The clear preponderance of the evidence pertaining to the cell phone with the number [redacted] shows that it was the cell phone assigned to Appellant and used by him during

the time of the events for which the Department discharged him. There is no evidence that the phone was used by anyone else. On the other hand, the evidence does not show, nor purport to show, that Appellant used no other telephone during that period. In fact, both Ms [redacted] and [redacted] testified that at least one call was shown by the caller ID as being from the Compton station.

The second most important "witness" is the one who elected not to testify at all, the Appellant. While Appellant had a right not to testify, the fact finder is permitted to draw adverse inferences from his failure to do so.

Turning to the specific factual allegations against Appellant:

1. Appellant behaved immorally and discourteously toward [redacted] while assigned to gather fingerprint evidence in her home in that he

a. Made inappropriate comments or asked inappropriate questions of Ms [redacted] on September 18, 2007, including whether she lived alone or with a [redacted] whether her [redacted] whether he could have a relationship with her and that he found her attractive.

The uncontradicted evidence, which I credit, was that Appellant asked whether Ms [redacted] lived alone or with [redacted] and whether [redacted] Although in her interviews with Detectives Gomez and Chevalier Ms [redacted] said that Appellant said that he wanted to have a relationship with her and that he found her attractive, she did not testify to either of those statements in the hearing so there is no admissible evidence to support a finding that he said these things. Considered in isolation, the questions about family relationships might not be inappropriate, but considered in light of what followed and the apparent intent with

which they were asked, they were inappropriate.

b. Returned to Ms [redacted] home approximately 20 minutes after leaving it, bringing two pizzas for Ms [redacted] children and then telling her that he had something urgent to tell her and needed to speak privately with her away from the [redacted]

The uncontradicted evidence, including Appellant's statements in the IAB interview, supports the conclusion that Appellant brought pizzas to Ms [redacted] home shortly after being told that she no longer wanted him to look for fingerprints. The uncontradicted and credible testimony of both Ms [redacted] and her [redacted] was that Appellant told her he had something urgent to tell her and that he wanted to discuss it with her privately, away from the [redacted] Their testimony is weakened by their inconsistency about the details of which room the conversation occurred in and whether Appellant or Ms [redacted] led the way, but in the absence of contrary evidence, the preponderance of the evidence is that both of these factual allegations are true.

c. Stared at Ms [redacted] breasts while commenting "Very good."

Ms [redacted] did not testify to this allegation at the hearing. There is, therefore, no admissible evidence to support it.

d. Asked Ms [redacted] to expose her breasts to him, or asked her if he could touch her breasts, or told her he wanted to see or touch her breasts and then he would leave.

The uncontradicted admissible evidence, which I credit, is that Appellant asked something of Ms [redacted] with respect to her breasts. It is less clear what he asked as she gave three different versions at different times. It is not surprising that a woman subjected by a police officer to a request to do something with her breasts might be so taken aback that she would

have difficulty remembering one to three years later precisely what favor he wanted, assuming the request was unambiguous in the first place. In light of Appellant's subsequent conduct discussed in the next paragraph, the preponderance of the evidence indicates that he asked to see Ms [redacted]' breasts.

e. Pulled Ms [redacted]' blouse down, partially exposing her bare breast.

The uncontradicted admissible evidence, which I credit, is that Appellant pulled on Ms [redacted]' blouse, looked inside the blouse and at least partially exposed one of her breasts. What uncertainty there is lies in the details of how he pulled and how she held her arms. There is also some variability in her account of Appellant's touching himself as he left the bedroom, but she consistently described some kind of motion in the area of his pants or genitals. One can expect a person's memory of such details to fade over time even while memory of the act of exposing her breast or breasts is indelible. Her core narrative is credible and to some extent corroborated by the testimony of her [redacted]

f. Called Ms [redacted] at her residence approximately 20 minutes after leaving her home the second time on September 18, 2007, and thereafter called her on multiple occasions during September and October 2007.

The cell phone records establish beyond any doubt that Appellant called Ms [redacted] on multiple occasions in September and October 2007. Those records do not include a call on September 18, 2007, but Ms [redacted] and [redacted] both testified credibly that they received a call on that date. [redacted] testified credibly and without contradiction that the caller ID indicated the call came from the Compton Sheriff's station, which was the station that had investigated the burglary and called for a print deputy to go to the scene. [redacted] also testified

that he identified himself, saying, "Hi. I'm Deputy Pizza."

g. Returned to Ms [redacted]' home approximately two weeks after September 18, 2007, and stood outside her bathroom door while she was showering.

The only evidence on point is the uncontradicted testimony of Ms [redacted], which I credit.

h. Called Ms [redacted] approximately 20 minutes later and talked to her in a sexual manner, asking her such things as whether she touched her breasts or her private parts in a sexual manner while in the shower.

The only evidence on point is the uncontradicted testimony of Ms [redacted] that he said these things. I credit her testimony. Her opinion that Appellant might have been masturbating as he said these things might or might not be correct, but the department did not allege that he masturbated.

i. During the period September through November 2007, drove his unmarked Sheriff's van to Ms [redacted]' home on at least two occasions and parked nearby, causing Ms [redacted] to become afraid.

There was evidence at the hearing of only one occasion when Ms [redacted] or [redacted] saw a white van parked near their apartment. On that occasion, according to both, the [redacted] family was driving home from an errand when they spotted the van and, while moving, identified it and its occupant. Although Ms [redacted] had originally reported that the van was unmarked, at trial both she and [redacted] said it was marked on the doors with logos or words identifying it as belonging to the Sheriff's Department. The testimony of Detective Chun that no van available to Appellant had such markings, together with photographs of two of the vans,

effectively contradicts the evidence offered by the Department on this point. In addition, the identification of the person in the van was too vague and the opportunity for observation too brief to be convincing.

The actions of Appellant found above establish by the preponderance of the evidence that Appellant behaved immorally and discourteously to [redacted] while assigned to gather fingerprint evidence in her home.

2. Specific allegations of making false statements during an internal investigation interview on August 5, 2009, were Appellant's statements

a. That he did not ask Ms [redacted] to step into one of the bedrooms to speak privately with her on September 18, 2007.

As stated above, the preponderance of the evidence establishes the Appellant did ask Mr [redacted] to step into a bedroom to speak privately with her on that date. Appellant's statement to the contrary is false.

b. That he did not ask Ms [redacted] to be with him in a dating relationship.

No evidence was offered to prove that Appellant asked Ms [redacted] to be with him in a dating relationship. His denial of the allegation has not been proven false.

c. That he did not stare at Ms [redacted]' breasts and did not make the comment "very good" while staring at her breasts.

No evidence of these acts was offered. Appellant's denial of the allegation has not been proven false.

d. That he never asked Ms [redacted] to expose her breasts to him.

The preponderance of the evidence establishes that Appellant did ask Ms [redacted] to

expose her breasts to him. Appellant's statement to the contrary is false.

e. That he never pulled Ms [redacted] blouse down to expose her bare breast and that he never touched her in that manner.

The preponderance of the evidence establishes that Appellant did pull down Ms [redacted] breast to expose her bare breast and that he did touch her in that manner. Appellant's statement to the contrary is false.

f. That after he left Ms [redacted] home the second time on September 18, 2007, he never made contact with Ms [redacted] again.

The preponderance of the evidence establishes that Appellant made contact with Ms [redacted] repeatedly after September 18, 2007. Appellant's statement to the contrary is false.

g. That he did not recall (in response to a "do you recall" question) going back to Ms [redacted] home approximately two weeks after September 18, 2007, and standing outside her bathroom door while she was taking a shower.

The preponderance of the evidence establishes that Appellant did return to Ms [redacted] home approximately two weeks after September 18, 2007, and stood outside her bathroom door while she was taking a shower. Appellant's statement to the contrary is false. If his statement is understood merely to allege a failure of memory rather than as a denial, it is incredible and false.

h. That he did not remember (in response to a "do you remember" question) calling Ms [redacted] and asking her if she touched herself in a sexual manner while in the shower.

The preponderance of the evidence establishes that Appellant did call Ms [redacted] and ask her if she touched herself in a sexual manner while in the shower. Appellant's statement to

the contrary is false. If his statement is understood merely to allege a failure of memory rather than as a denial, it is incredible and false.

The discipline imposed by the Department is dismissal. The discipline is appropriate. A deputy who uses his official position as an opportunity to make sexual demands on women he encounters while performing his official duties, as Appellant did, acts in violation of society's expectations for police officers. By his conduct toward [redacted] Appellant has violated the Department's Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; 3-01/030.07, Immoral Conduct; 3-01/000.10, Professional Conduct; 3-01/030.15, Conduct Toward Others; and 3-01/050.10, Performance to Standards. By making false statements during an internal investigation Appellant violated Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements during and Internal Investigation.

FINDINGS OF FACT

The following facts are found based on the preponderance of the evidence:

1. Appellant was notified by the Department on December 7, 2009, that he was being dismissed from his position as a deputy sheriff for behaving immorally and discourteously toward [redacted] while assigned to gather fingerprint evidence in her home and for failing to make statements and/or making false statements during an internal investigation.

2. On September 18, 2007, Appellant went to the home of [redacted] at [redacted] California, to find fingerprints after a reported burglary.

3. On September 18, 2007, in the home of [redacted] at [redacted]

[redacted] California, Appellant made comments and asked questions of Ms [redacted] on September 18, 2007, including comments or questions as to whether she lived alone or with a husband and whether her children had different fathers. These comments and questions were inappropriate for a deputy sheriff assigned to collect fingerprints at a crime scene.

4. On September 18, 2007, in the home of [redacted] at [redacted] California, Appellant did not ask [redacted] whether he could have a relationship with her nor say that he found her attractive.

5. On September 18, 2007, Appellant returned to Ms [redacted]' home approximately 20 minutes after leaving it, bringing two pizzas for Ms [redacted] and then telling her that he had something urgent to tell her and needed to speak privately with her away from the [redacted]

6. On September 18, 2007, Appellant did not stare at Ms [redacted]' breasts while commenting "Very good."

7. On September 18, 2007, Appellant asked Ms [redacted] to let him see her breasts.

8. On September 18, 2007, Appellant pulled Ms [redacted]' blouse down, partially exposing one of her breasts.

9. Appellant called Ms [redacted] at her residence approximately 20 minutes after leaving her home the second time on September 18, 2007, and thereafter called her on multiple occasions during September and October 2007.

10. Appellant returned to Ms [redacted]' home approximately two weeks after September 18, 2007, and stood outside her bathroom door while she was showering.

11. Approximately 20 minutes after leaving Ms [redacted]' home on the day discussed in

the immediately preceding Finding, Appellant called Ms [redacted] approximately 20 minutes later and talked to her in a sexual manner, asking her such things as whether she touched her breasts or her private parts in a sexual manner while in the shower.

12. During the period September through November 2007, Appellant did not drive his unmarked Sheriff's van to Ms [redacted] home on at least two occasions and park nearby, causing Ms [redacted] to become afraid.

13. Appellant made a false statement during an internal investigation interview on August 5, 2009, in saying that he did not ask Ms [redacted] to step into one of the bedrooms to speak privately with her on September 18, 2007.

14. Appellant did not make a false statement during an internal investigation interview on August 5, 2009, in saying that he did not ask Ms [redacted] to be with him in a dating relationship.

15. Appellant did not make a false statement during an internal investigation interview on August 5, 2009, in saying that he did not stare at Ms [redacted] breasts and did not make the comment "very good" while staring at her breasts.

16. Appellant made a false statement during an internal investigation interview on August 5, 2009, in saying that he never asked Ms [redacted] to expose her breasts to him.

17. Appellant made a false statement during an internal investigation interview on August 5, 2009, in saying that he never pulled Ms [redacted] blouse down to expose her bare breast and that he never touched her in that manner.

18. Appellant made a false statement during an internal investigation interview on August 5, 2009, in saying that after he left Ms [redacted] home the second time on September 18,

2007, he never made contact with Ms [redacted] again.

19. Appellant made a false statement during an internal investigation interview on August 5, 2009, in saying that he did not recall (in response to a "do you recall" question) going back to Ms [redacted] home approximately two weeks after September 18, 2007, and standing outside her bathroom door while she was taking a shower.

20. Appellant made a false statement during an internal investigation interview on August 5, 2009, in saying that he did not remember (in response to a "do you remember" question) calling Ms [redacted] and asking her if she touched herself in a sexual manner while in the shower.

CONCLUSIONS OF LAW

1. The Department has met its burden in proving the factual allegations contained in its letter of December 7, 2009, are true.

2. The Department met its burden in proving the discipline is appropriate.

RECOMMENDATION

The Department met its burden in proving that the Appellant violated the Department's Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; 3-01/030.07, Immoral Conduct; 3-01/000.10, Professional Conduct; 3-01/030.15, Conduct Toward Others; and 3-01/050.10, Performance to Standards' and Section 3-01/040.75, Failure to Make Statements and/or Making False Statements during and Internal Investigation. Therefore, it is recommended that the Department be sustained in the discharge.

Dated: June 10, 2011

Elwood Hain
Hearing Officer



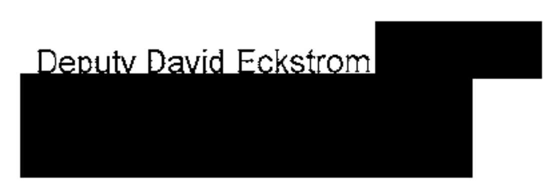
County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

December 7, 2009



Deputy David Eckstrom [redacted]

Dear Deputy Eckstrom:

On October 28, 2009, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2239239. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, your Division Chief determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff , Item No. 2708A, with this Department, effective as of the close of business on December 4, 2009.

An investigation under File Number IAB 2239239, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.07, Immoral Conduct; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards, on or between September 18, 2007 and November 2007, while assigned to gather fingerprint evidence from the home of Ms. [redacted] following a burglary, you failed to maintain a level of moral conduct that is in keeping with the highest standards of the law enforcement profession and/or failed to treat Ms. [redacted] in a courteous and/or respectful manner, as evidenced by, but not limited to:

a) making inappropriate comments or asking inappropriate questions of Ms [redacted] on September 18, 2007, including but not limited to, did she live alone or with [redacted] have [redacted] and/or could you have a relationship with her, and/or telling her you found her attractive, and/or;

b) returning to Ms. [redacted] home approximately 20 minutes after leaving on September 18, 2007, and bringing two pizzas for Ms. [redacted] and then telling Ms. [redacted] you had something urgent to tell her and needed to speak privately with her away from the [redacted] and/or;

c) staring at Ms. [redacted] breasts while making the comment, "very good," and/or;

d) asking Ms. [redacted] to expose her breasts to you and/or asking Ms. [redacted] if you could touch her breasts, and/or telling Ms. [redacted] the only thing you wanted was to see and/or touch her breasts and then you would leave, and/or;

e) reaching over and pulling Ms. [redacted] blouse down, partially exposing her bare breast, and/or;

f) calling Ms. [redacted] at her residence approximately 20 minutes after leaving her home the second time on September 18, 2007, and then calling Ms. [redacted] again on multiple occasions during September and October 2007, and/or;

g) returning to Ms. [redacted] home approximately two weeks after September 18, 2007, and standing outside her bathroom door while she was showering, and/or;

h) calling Ms. [redacted] approximately 20 minutes later and talking to her in a sexual manner, asking her such things as, but not limited to, had she touched her breasts and/or her private parts in a sexual manner while in the shower, and/or;

i) sometime on or between September 2007 and November 2007, driving your unmarked Sheriff's van to Ms. [redacted] home on at least two occasions, and parking nearby, causing Ms. [redacted] to become afraid.

Your above conduct runs counter to this Department's Core Values, Mission and Creed, and has damaged the Department's reputation and brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During an Internal Investigation, on or about August 5, 2009, during your subject interview, you made false and/or misleading statements to investigators, including, but not limited to:

a) that you did not ask Ms. [redacted] to step into one of the bedrooms to speak privately with her on September 18, 2007, and/or;

b) that you did not ask Ms. [redacted] to be with you in a dating relationship, and/or;

c) that you did not stare at Ms. [redacted] breasts and/or did not make the comment, "very good," while staring at her breasts, and/or;

d) that you never asked Ms. [redacted] to expose her breasts to you, and/or;

e) that you never pulled Ms. [redacted] blouse down to expose her bare breast, and/or that you never touched Ms. [redacted] in that manner, and/or;

f) that after you left Ms. [redacted] home the second time on September 18, 2007, that you never made contact with Ms. [redacted] again, and/or;

g) that you do not recall going back to Ms. [redacted] home approximately two weeks after September 18, 2007, and standing outside her bathroom door while she was taking a shower, and/or;

h) that you do not remember calling Ms. [redacted] and asking her if she touched herself in a sexual manner while in the shower.

[redacted]

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

PAUL K. TANAKA
ASSISTANT SHERIFF

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

PKT:RAA:KM:md

c: Advocacy Unit
Dennis Burns, Chief, Custody Operations Division
Anthony Ward, Captain, Twin Towers Correctional Facility
Internal Affairs Bureau
Office of Independent Review (OIR)
Kevin E. Hebert, A/Captain, Personnel Administration